

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Megan Ault	Team: Team # 8	CCRB Case #: 200811569	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 07/25/2008 11:30 AM	Location of Incident: East 116th Street and Lexington Avenue	Precinct: 25	18 Mo. SOL 1/25/2010	EO SOL 1/25/2010	
Date/Time CV Reported Mon, 08/11/2008 4:16 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 08/11/2008 4:16 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Michaelang Hidalgo	10969	936043	TB DT04
2. POM Hariton Marachilian	13084	935245	TB DT04
3. An officer			TB DT04

Officer(s)	Allegation	Investigator Recommendation
A.POM Hariton Marachilian	Abuse: PO Hariton Marachilian stopped § 87(2)(b)	
B.POM Hariton Marachilian	Abuse: PO Hariton Marachilian frisked § 87(2)(b)	
C.POM Michaelang Hidalgo	Abuse: PO Michaelangelo Hidalgo frisked § 87(2)(b)	
D.POM Hariton Marachilian	Abuse: PO Hariton Marachilian searched § 87(2)(b)	
E.POM Michaelang Hidalgo	Abuse: PO Michaelangelo Hidalgo searched § 87(2)(b)	
F.POM Hariton Marachilian	Force: PO Hariton Marachilian used physical force against § 87(2)(b)	
G. An officer	Abuse: An officer stopped an individual.	
H. An officer	Abuse: An officer threatened to arrest an individual.	
I. An officer	Off. Language: An officer made remarks to an individual based upon race.	

Synopsis

§ 87(2)(b) called the CCRB to file this complaint on August 11, 2008.

Around 11:30 AM on July 25, 2008, § 87(2)(b) and one of his friends, § 87(2)(b) parted ways outside of the 6 Train stop at the corner of 116th Street and Lexington Avenue. Officers identified as PO Hariton Marachilian and PO Michaelangelo Hidalgo of Transit Borough District 4 stopped § 87(2)(b) (**Allegation A**), and allegedly frisked (**Allegations B and C**), and searched him (**Allegations D and E**). PO Marachilian allegedly struck § 87(2)(b) in the face (**Allegation F**). The officers allegedly stopped (**Allegation G**), threatened to arrest (**Allegation H**), and spoke offensively (**Allegation I**) to § 87(2)(b).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b) appeared at the CCRB on August 26, 2008 (encl. 4A). He is a § 87(2)(b)-old black male with brown eyes and black hair. He is 6'3" tall and weighs 220 pounds.

§ 87(2)(b) stated that around 11:30 AM on July 25, 2008, he and his friend § 87(2)(b) were at the corner of East 116th Street and Lexington Avenue in Manhattan. § 87(2)(b) reminded § 87(2)(b) that he owed him money. § 87(2)(b) handed him a twenty-dollar bill after which they parted ways. They exchanged nothing besides the money. § 87(2)(b) was eating graham crackers at that time.

Two officers in plainclothes approached § 87(2)(b). PO1 was a 21-25-year-old Hispanic male, identified through investigation as PO Michaelangelo Hidalgo. He had braces on his teeth, weighed 140 pounds, was 5'9" tall, and had wavy black hair. PO2 was a light-skinned Hispanic male wearing a striped white polo shirt, jean shorts and white sneakers. He was 25-30 years-old, 5'9" tall, and slightly heavier than his partner. PO2 was identified through the investigation as PO Hariton Marachilian. PO Marachilian asked § 87(2)(b) what § 87(2)(b) had handed him and what he had put in his mouth. § 87(2)(b) responded that his friend owed him money and that he was eating crackers. PO Marachilian stated, "We're going to arrest you and hold you until you pass whatever you swallowed," (**Allegation A**). The officers patted his pockets (**Allegations B and C**) and reached inside each of them (**Allegation D and E**); PO Hidalgo searched the pockets on § 87(2)(b)'s left side, and PO Marachilian searched the pockets on his right side. § 87(2)(b) had a large knapsack over his left shoulder, but the officers never searched it. PO Marachilian handcuffed his right hand to the railing of the subway's entrance and the two officers ran in the direction § 87(2)(b) had gone. While the officers were gone, § 87(2)(b) reached into his knapsack with his free hand and removed a cigarette which he started to smoke.

Two to three minutes later the officers returned with § 87(2)(b). PO Marachilian smacked § 87(2)(b) on his right cheek (**Allegation F**), knocking the cigarette out of his mouth. The officers tried unsuccessfully to extract confessions from § 87(2)(b) and § 87(2)(b) regarding their alleged drug sale. The officers then took § 87(2)(b) down into the subway station, leaving § 87(2)(b) alone on the sidewalk.

A few minutes later the officers returned, this time with a man wearing a striped MTA uniform. § 87(2)(b) stated that this man was a transit worker, but appeared to be "calling the shots." The transit worker was a 35-year-old Hispanic male around 5'9" tall and weighing 190 pounds. § 87(2)(b) asked

why he was being detained, but the officers did not respond. The officers asked repeatedly if § 87(2)(b) had bought drugs from § 87(2)(b) which § 87(2)(b) denied. The transit worker said, “Admit that he sold you drugs and you have my word we’ll release you.” At one point, the transit worker reminded the two officers to tuck their badges inside their shirts. A crowd of around 75 people had formed to watch what was taking place.

§ 87(2)(b) quietly mentioned to them that he worked as a confidential informant and he knew that what they were doing was against the law. The officers then removed § 87(2)(b)’s handcuffs and told him to leave. At no time during the incident did they ask § 87(2)(b) for his name or identification or fill out any paperwork.

§ 87(2)(b) later informed § 87(2)(b) that they had handcuffed him to a pole (**Allegation G**) inside the subway station and showed him a composite sketch of someone who had been snatching people’s ipods and cell phones inside the station. They told § 87(2)(b) that they would plant drugs on him unless he told them the truth about the individual’s whereabouts (**Allegation H**). They also made racist remarks, and one of the officers or the transit worker said, “Why are you fooling around with these niggers, they’re no good” (**Allegation I**). § 87(2)(b) stated that there were many people who would be willing to give statements about what happened, but he could not provide any of their names or contact information at the time of his interview. He could not provide § 87(2)(b)’s last name or any of his current contact information.

Results of Investigation

Witness Statement: MTA Employee § 87(2)(b) (encl. 5A)

§ 87(2)(b) appeared at the CCRB on June 2, 2009. § 87(2)(b) is a § 87(2)(b)-old white male. § 87(2)(b) works for the MTA as § 87(2)(b) and on the date and time of the incident was on duty in the 116th Street 6 Subway station. § 87(2)(b) wears an orange vest with yellow and gray reflective stripes over a gray uniform. § 87(2)(b) was shown photos of § 87(2)(b) and both officers, but recognized none of them. The investigator described the incident to him, but he did not remember witnessing it. § 87(2)(b) only occasionally sees officers interacting with civilians. He did not remember any problem with muggings in the station during the summer of 2008. He did not know of any MTA employee who had worked with officers to identify a thief in the station.

Attempts to Contact Additional Victim

§ 87(2)(b) never provided the investigation with § 87(2)(b)’s full name, or a working phone number at which he could be reached. Because of this and due to a lack of documentary evidence, the investigation was unable to identify or contact § 87(2)(b).

Officer Statement: PO Michaelangelo Hidalgo

PO Michaelangelo Hidalgo, a § 87(2)(b)-old Hispanic male assigned to Transit District 4, was interviewed at the CCRB at 11:45 AM on April 2, 2009. PO Hidalgo is 5’7” tall, weighs 130 pounds, and has brown hair and brown eyes. On July 25, 2008 PO Hidalgo worked from 8:05 AM until 4:40 PM. He and his partner, PO Marachilian, were assigned to anti-crime train patrol between 42nd St and 125 St on the 4/5/6 Subway line. He was in plainclothes and on foot. PO Hidalgo’s memo book contained no references to the incident (encl. 7A).

CCRB Statement (encl. 7B)

PO Hidalgo did not have an independent recollection of the incident. He did not recognize a photograph of § 87(2)(b) and a synopsis of the incident did not sound familiar to him. PO Hidalgo was not aware of an investigation regarding the theft of cell phones and ipods in the 116th Street subway station around the time of the incident, but stated that the whole line suffers from that problem. When asked if he would ever leave the subway station, PO Hidalgo said he would do so if he was pursuing someone who was running from the train station. When asked if he had ever worked in concert with an MTA employee, or if an MTA employee had ever assisted him in catching a perpetrator, PO Hidalgo said that he had never done so. The officers tend only to work with other members of service. PO Hidalgo also stated that he had never dressed as an MTA employee, nor had he ever worked with an officer who was dressed as an MTA employee.

PO Hidalgo denied interacting with, frisking, or searching § 87(2)(b) [REDACTED]. He also denied referring to § 87(2)(b) [REDACTED] as a “nigger,” and did not threaten to plant drugs on anyone. Neither he nor his partner struck § 87(2)(b) [REDACTED].

Officer Statement: PO Hariton Marachilian

PO Hariton Marachilian is a § 87(2)(b) [REDACTED]-old white male assigned to Transit District 4. He is 5’9” tall, weighs 170 pounds, and has brown hair and brown eyes. PO Marachilian appeared at the CCRB on April 13, 2009. On July 25, 2008 PO Marachilian worked from 8:05 AM until 4:40 PM with his partner, PO Hidalgo. They were assigned to anti-crime train patrol between 42nd Street and 125th Street on the 4/5/6 Line. He was in plainclothes and on foot.

Memo Book (encl. 6A)

PO Marachilian’s memo book contained the following in regards to the incident:

1130: 250 x1 § 87(2)(b) [REDACTED] M/B

CCRB Statement (encl. 6D)

PO Marachilian stated that he did not have an independent recollection of the incident. He did not remember why he stopped § 87(2)(b) [REDACTED] or any details of their interaction. He was shown a photo of § 87(2)(b) [REDACTED] and given a summary of the incident, but still did not remember what took place. PO Marachilian did not remember an MTA employee being involved, or showing a composite sketch of a thief to anyone.

PO Marachilian did not remember if § 87(2)(b) [REDACTED] was alone or with someone at the time he was stopped. There was a pattern of ipods and cell phones being snatched in that station at some point, but PO Marachilian did not know if it was during that time period. PO Marachilian said such patterns are usually handled by the detective squad. He did not remember § 87(2)(b) [REDACTED] mentioning that he was a police informant. PO Marachilian said it was possible that if an MTA employee witnessed a crime, they might work with the police to identify a perpetrator. However, he did not remember an MTA employee being involved in this instance. PO Marachilian did not know if any officers dressed up as MTA employees. He has never disguised himself as one, nor has he worked with an officer who has. PO Marachilian has never handcuffed someone to the railing outside the entrance of a subway station. PO Marachilian stated that to his recollection neither he nor his partner smacked § 87(2)(b) [REDACTED] in the face during the incident, or referred to § 87(2)(b) [REDACTED] as a “nigger.” He stated that he has never referred to anyone as a “nigger” while on duty, and his partner has never done so within his hearing. He stated that he has never threatened to plant drugs on anyone. PO Marachilian did not remember if he searched or frisked § 87(2)(b) [REDACTED].

Police Department Documents

Roll Call (encl. 9A)

Transit District 4’s roll call indicates that at the time of the incident, PO Marachilian and PO Hidalgo were working together as Anti-crime Team #1, and were assigned to patrol from 42nd Street to 125th Street.

UF 250 Log (encl. 11A)

The UF250 Log for the 25th Precinct on July 25, 2008 does not include any reports pertaining to the stop of § 87(2)(b) [REDACTED] or anyone named § 87(2)(b) [REDACTED].

Additional Records

Civilian Criminal Conviction History (encls. 13A-14O)

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Officer Histories (encls. 1A-B)

The CCRB has never substantiated an allegation of misconduct against PO Marachilian. In Case # 200809828, the agency substantiated an allegation that PO Hidalgo threatened to arrest an individual, and recommended that charges be brought against him.

Conclusions and Recommendations

Officer Identification

§ 87(2)(b) alleged that two officers approached him and one of them stated that he was under arrest. Based on PO Marachilian's memo book entry, the investigation was able to determine that PO Marachilian and PO Hidalgo interacted with § 87(2)(b). § 87(2)(b) described the officer who made this statement as a light-skinned Hispanic who was heavier and older than his partner. PO Marachilian is older, heavier, and lighter-skinned than his partner. § 87(2)(g)

§ 87(2)(b) alleged that both officers frisked him. § 87(2)(g)

§ 87(2)(b) alleged that both officers searched him. § 87(2)(g)

According to § 87(2)(b) an officer hit him in the face. § 87(2)(b)'s description of this officer matched PO Marachilian's pedigree information. § 87(2)(g)

§ 87(2)(b) alleged that one or both of the officers stopped, threatened, and made racist remarks to his friend, § 87(2)(b). Because § 87(2)(b) did not witness any of this alleged misconduct take place, and the CCRB never obtained a statement from § 87(2)(b), the identity of the subject of these allegations remains unclear. § 87(2)(g)

Undisputed Facts

It is undisputed that PO Hidalgo and PO Marachilian interacted with § 87(2)(b)

Disputed Facts

§ 87(2)(g)

Assessment of Evidence

§ 87(2)(b) alleged that PO Marachilian and PO Hidalgo both frisked and searched him. Neither officer remembered any details of their interaction with § 87(2)(b). § 87(2)(g)

§ 87(2)(b) alleged that PO Marachilian struck him in the face, knocking a cigarette out of his hand. § 87(2)(b) had no injuries associated with this alleged force. § 87(2)(g)

Allegation A: PO Marachilian stopped § 87(2)(b)

According to § 87(2)(b) he and § 87(2)(b) exchanged money, after which § 87(2)(b) placed something in his mouth and they parted ways. § 87(2)(g)

§ 87(2)(g)

Allegation B: PO Marachilian Frisked § 87(2)(b)

§ 87(2)(g)

According to Patrol Guide Procedure 212-11, officers may frisk an individual when they “Reasonably suspect [they] or others are in danger of physical injury.” § 87(2)(g)

Allegation C: PO Hidalgo frisked § 87(2)(b)

§ 87(2)(g)

Allegation D: PO Marachilian searched § 87(2)(b)

§ 87(2)(g)

Allegation E: PO Hidalgo searched § 87(2)(b)

§ 87(2)(g)

Allegation F: PO Marachilian used physical force against § 87(2)(b)

§ 87(2)(g)

Allegation G: An officer stopped an individual.

§ 87(2)(b) failed to provide the investigation with § 87(2)(b)'s full name or any of his contact information.

§ 87(2)(g)

Allegation H: An officer threatened to arrest an individual.

§ 87(2)(g)

Allegation I: An officer spoke offensively to an individual.

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: